

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

RAYMOND PROCHASKA,)
)
Petitioner,)
)
v.) Case No. CIV-10-1090-F
)
HASSELL HIGGINS, WARDEN, JEHCC,)
)
Respondent.)

REPORT AND RECOMMENDATION

Mr. Raymond Prochaska has filed a petition for habeas relief. Rather than pay the filing fee, Mr. Prochaska moved for leave to proceed *in forma pauperis*. The motion indicates that Mr. Prochaska has \$59.20 in his account,¹ and the filing fee is only \$5.00.² Because Mr. Prochaska has adequate funds for the filing fee, the undersigned recommends that the Court: (1) deny the motion for leave to proceed *in forma pauperis*, (2) order payment of the filing fee within twenty days,³ and (3) dismiss the action without prejudice if Mr. Prochaska fails to timely pay the filing fee or show good cause for the failure to do so. *See* W.D. LCvR 3.3(e).

¹ Oklahoma law governing the statutory savings account expressly allows inmates to withdraw funds from the account to pay fees under 28 U.S.C. § 1911, *et seq.* Okla. Stat. tit. 57 § 549(A)(5); *see also Williams v. Austin*, 890 P.2d 416, 418 (Okla. Ct. App. 1994) (“A prisoner’s savings held by the Department of Corrections may be used to pay fees or costs in filing a civil action.” (citations omitted)).

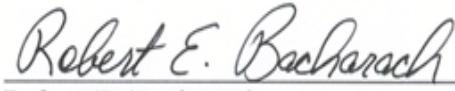
² *See* 28 U.S.C. § 1914(a) (2000).

³ *See* W.D. Okla. LCvR 3.3(e).

The Petitioner is advised of his right to object to this report and recommendation by November 15, 2010. *See* 28 U.S.C. 636(b)(1); Fed. R. Civ. P. 6(a)(1)(C), 6(d), 72(b)(2). If the Petitioner does object, he must file a written objection with the Court Clerk for the United States District Court, Western District of Oklahoma. The Petitioner is further advised that if he does not timely object, he would waive his right to appellate review over a denial of pauper status in the district court. *See Moore v. United States*, 950 F.2d 656, 659 (10th Cir. 1991).

This report and recommendation terminates the referral.

Entered this 28th day of October, 2010.



Robert E. Bacharach
United States Magistrate Judge